RECENT CASE NOTES

ADMINISTRATIVE LAW—REMOVAL OF PUBLIC OFFICER—FAIRNESS OF HEARING.—The relator, a police captain, by sending a letter directly to the defendant, the acting mayor of the City of Buffalo, had disregarded a departmental rule requiring communications to be made through the Chief of Police. For this he had been demoted to the rank of patrolman by the defendant. Notice and a hearing had been given, according to the city charter, and certiorari proceedings were brought to review the trial. The evidence showed that, although ill will existed between the relator and the defendant, the latter had acted as judge in the proceedings which found the former guilty. *Held,* that the prejudice of the acting mayor was insufficient to disqualify him as judge, but that there had been on the merits no such violation of the departmental rules as to warrant demotion. *People v. Kreinheder* (1921) 197 App. Div. 887, 189 N. Y. Supp. 767.

In the absence of statute, the power of removal from public office is incidental to the power of appointment. *Burnap v. United States* (1920) 252 U. S. 512, 40 Sup. Ct. 374; *Kydd v. San Francisco* (1918) 37 Calif. App. 598, 174 Pac. 88. An incumbent for an indefinite term holds office at the discretion of the person holding the appointing power. *Barbor v. County Court* (1920) 85 W. Va. 359, 101 S. E. 721. Where however, the term is fixed by law, removal is possible only as the state constitution or statute may direct. *State v. Hough* (1915) 103 S. C. 87, 87 S. E. 436. Police departments ordinarily derive their organization from city charters, which designate a method of removal. Thus where notice and a hearing are provided, a failure to comply with the statute renders a dismissal of no effect. *State v. Wilkinson* (1921) 59 Mont. 327, 196 Pac. 878. The hearing must be fair. *Eisberg v. Mayor* (1919, Sup. Ct.) 92 N. J. L. 321, 105 Atl. 716. Where a board of police commissioners conduct the hearing, an interested commissioner may not sit as judge. *People v. Roosevelt* (1897) 23 App. Div. 533, 48 N. Y. Supp. 578. But the mere filing of charges by a commissioner does not thus disqualify him as a judge. *State v. Burney* (1917) 269 Mo. 602, 191 S. W. 981. The removal proceeding is reviewable by a court which will determine whether the finding of fact is supported by the evidence. *McCarthy v. Board* (1915) 38 R. I. 385, 95 Atl. 921. But where any evidence sustains the finding, the reviewing court will not pass on the facts. *Cole v. City of Portland* (1920) 96 Ore. 645, 190 Pac. 720. The sufficiency of the cause of removal has been held to be a question of law for the court. *Stanley v. Fiscal Court* (1921) 190 Ky. 495, 227 S. W. 813. Hence a removal will not be sustained where the accused has been guilty of a mere technical violation of the police regulation. *People v. McAdoo* (1907) 117 App. Div. 438, 102 N. Y. Supp. 656. The court in the instant case quite properly reinstated the relator, for a slight infraction of department rules should not call for such a severe punishment as demotion. The case might well have held that the Mayor was too prejudiced against the relator to act as judge at the hearing.

ADMIRALTY—SEAMEN'S RIGHT TO NEW CONTRACT BEFORE COMPLETION OF VOYAGE.—The libellants, seamen, signed for a six months' voyage to an African port and return to the United States. The vessel, delayed by trouble, was at Accra, on the African West coast, at the expiration of the six months. The crew demanded double wages for the return trip and the master acceded under protest. Upon landing in Philadelphia he refused to abide by the agreement. *Held,* that

the crew were entitled to double wages from Gibraltar, the nearest port where a consul could have considered the question, although the vessel had in fact never touched there. *Shanley v. United States* (1921, E. D. N. Y.) 274 Fed. 691.

A master is not privileged to discharge his crew nor has the crew a right to wages in full until the end of the voyage. *Schermacher v. Yates* (1893, E. D. N. Y.) 57 Fed. 668. The end of the voyage is not a port of distress, but one of destination. *Fairchild v. The Aurelius* (1914, D. Mass.) Fed. Cas. No. 4609. An extension of the voyage by intention or neglect of the master is such a breach of the contract as entitles the seamen to demand their release in any safe port. *The Hotspur* (1874, D. Or.) 3 Sawyer, 194. But an extension of the voyage as in the instant case, beyond the time stipulated, due to perils of the sea which could not reasonably be guarded against, is not a breach of the contract as to time and does not privilege the seamen to leave the vessel nor demand wages in full before reaching the port of destination. *Hamilton v. United States* (1920, C. C. A. 4th) 268 Fed. 15. The new contract obtained by the libellants was prematurely demanded and void at its inception. Some courts have held such contracts entirely void as contrary to public policy. *Bartlett v. Wyman* (1817, N. Y.) 14 Johns. 260. But the instant case, by validating the agreement in part, adopts the more general and equitable principles of courts of admiralty in construing contracts of seamen. *Brice v. The Nancy* (1783, Pa. St. Adm. Ct.) Fed. Cas. No. 1855; *The Helen Fairlamb* (1918, E. D. Pa.) 251 Fed. 412.

ATTORNEY AND CLIENT—ATTORNEY'S IMPLIED AUTHORITY—POWER TO BIND CLIENT IN JUDGMENT BY CONSENT.—In a summary proceeding in ejectment, the jury gave possession of the property to the plaintiff and fixed the rental at an amount considerably higher than was warranted by the evidence. Upon an intimation by the court that the verdict would be set aside unless the rental were reduced, the plaintiff's attorney, disregarding his client's express instructions but believing that he was acting for the latter's best interest, consented to the reduction. *Held,* that such a judgment should be set aside upon motion by the client. *Bizzell v. Auto Tire & Equipment Co.* (1921, N. C.) 108 S. E. 439.

The authority of an attorney extends to all the customary incidents of litigation, being especially broad during the actual progress of the trial, as prompt action is then essential. *Christy v. Atchison, T. & S. F. Ry.* (1916, C. C. A. 8th) 233 Fed. 255; *Dixon v. Floyd* (1906) 73 S. C. 202, 53 S. E. 167. A material right, such as that of trial by jury, may not be waived without the client's consent. *Lyman v. Kaul* (1916) 275 Ill. 11, 113 N. E. 944. But the attorney may agree to omit certain evidence. *Szunyog v. Kiss* (1920, Sup. Ct.) 182 N. Y. Supp. 898. He may permit the court to fix the allowance for counsel fees, although no evidence as to what they should be has been introduced. *Callahan v. Callahan* (1920, Idaho) 192 Pac. 660. He may consent to a judgment in debt, in consideration of the withdrawal of an allegation of tort. See *So. Chemical Co. v. Bass* (1918) 175 N. C. 426, 95 S. E. 766. And his client is concluded by an admission of fact during the trial, or by a judgment based upon an agreed statement of facts. *Oregon-Washington Ry. & Nav. Co. v. Reed* (1917) 87 Or. 398, 169 Pac. 342; *Scotti v. District Court* (1920) 42 R. I. 556, 109 Atl. 207. But the court has power to relieve a party from an improvident agreement that would otherwise be binding. *Humphries v. Shapiro* (1919) 187 App. Div. 96, 175 N. Y. Supp. 426. A distinction is drawn between the attorney's power to compromise a client's cause of action and his power to confess judgment. *Parr v. Chicago, B. & Q. Ry.* (1916) 194 Mo. App. 416, 184 S. W. 1169. The former is not permissible unless there is no time in which to communicate with the client without hazarding a loss. *Gibson v. Nelson* (1910) 111 Minn. 183, 126 N. W. 731. And